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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,850	08/18/2003	Cynthia H. Nordness	KCC-15,611.1	4040

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/642,850	Applicant(s) NORDNESS ET AL.	
	Examiner C. Lynne Anderson	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 23 January 2006 have been fully considered but they are not persuasive.

In response to the applicant's argument that Roe fails to disclose mesh, it is noted that Roe discloses a nonwoven material, which has an open network that allows fluid or particulates to pass through. The definition of mesh set forth in the instant specification does not limit the size of the particulates that may pass through the mesh. It is noted that sand particles may be very fine, and therefore able to pass through a nonwoven material.

In response to applicant's argument that the prior art fails to disclose a permeability to sand, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Both Roe and Mitutani disclose a mesh material that fulfills the structural limitations of the claims, such as a SMS nonwoven web, and is fully capable of performing the functions claimed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 5, 7-12, 18-23, and 26-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Roe et al. (US 2003/0100872 A1).

Roe discloses an absorbent garment, as shown in figure 1, comprising a composite structure having end and side edges, a perimeter, and a central region. The composite structure includes a liquid-permeable body side liner 24, an outer cover 26, an absorbent assembly 28, and a mesh liner 50, as shown in figure 3B. The mesh liner 50 comprises a nonwoven material 52, as disclosed in paragraph [0043], which is permeable to fine particulates such as sand.

With respect to claim 2, the mesh liner 50 comprises a nonwoven material, as disclosed in paragraph [0043].

With respect to claim 5, the nonwoven material comprises a spunbond/meltblown/spunbond web, as disclosed in paragraph [0043].

With respect to claim 7, the SMS web comprises at least two layers of material.

With respect to claim 8, the mesh liner 50 is attached to the composite around its perimeter, but unattached in the central region, as shown in figure 7B.

With respect to claim 9, the mesh liner 50 is liquid permeable but not porous enough to allow bowel material.

With respect to claims 10-12, the mesh liner 50 may have a basis weight of 20 gsm, as disclosed in paragraph [0044].

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With respect to claims 18-19, an elastic strand 92 is attached between the mesh liner 50 and the body side liner 24, as shown in figure 7B.

With respect to claim 20, the mesh liner 50 is attached to containment flaps 108, as shown in figure 8B.

With respect to claim 21, the mesh liner 50 is attached to the composite around its perimeter, but unattached in the central region, as shown in figure 7B.

With respect to claim 9, the mesh liner 50 is liquid permeable but not porous enough to allow bowel material.

With respect to claims 10-12, the mesh liner 50 may have a basis weight of 20 gsm, as disclosed in paragraph [0044].

With respect to claim 26, the mesh liner 50 is folded, as shown in figure 8B.

With respect to claim 27, the garment is an absorbent article having a waist opening and two leg openings, as disclosed in paragraph [0037].

With respect to claims 28-30, the liner is a mesh liner 50, comprising a spunbond web and a meltblown web, as disclosed in paragraph [0043].

With respect to claim 31, the mesh liner 50 is attached to the composite around its perimeter, but unattached in the central region, as shown in figure 7B.

With respect to claim 32, the mesh liner 50 is attached to the liquid-permeable layer 24.

With respect to claim 33, the article is fully capable of functioning as a swim pant.

With respect to claim 34, the mesh liner 50 is attached to containment flaps 108, as shown in figure 8B.

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With respect to claim 35, the containment flaps 108 are attached to the first side of the composite structure, as shown in figure 8B.

With respect to claims 36-38, the liner is a mesh liner 50, comprising a spunbond web and a meltblown web, as disclosed in paragraph [0043].

With respect to claim 39, the mesh liner 50 is attached to the composite around its perimeter, but unattached in the central region, as shown in figure 7B.

With respect to claim 40, the article is fully capable of functioning as a swim pant.

Claims 1-5, 7-12, 20-23, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Mitzutani et al. (US 2002/0028624 A1).

Mitutani discloses an absorbent garment, as shown in figure 1, comprising a composite structure having end and side edges, a perimeter, and a central region. The composite structure includes a liquid-permeable body side liner 11, an outer cover 7, an absorbent assembly 8, and a mesh liner 12, as shown in figure 2.

With respect to claim 2, the mesh liner comprises a nonwoven material, as disclosed in paragraph [0070].

With respect to claims 3 and 4, the mesh liner comprises a nonwoven material comprising polypropylene and polyethylene, as disclosed in paragraphs [0070-0071].

With respect to claim 5, the nonwoven material is a spunbond/meltblown/spunbond web, as disclosed in paragraph [0070].

With respect to claim 7, the SMS web comprises at least two layers of material.

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With respect to claim 8, the mesh liner 12 is attached to the composite around its perimeter, and is unattached in a central region of the composite, as shown in figure 2.

With respect to claim 9, the mesh liner 12 is liquid permeable but not porous enough to allow bowel material.

With respect to claims 10-12, the mesh liner 12 has a basis weight in a range from 15-40 gsm.

With respect to claim 20, the mesh liner 12 comprises part of the topsheet 10, which is attached to containment flaps 5, as shown in figure 1 and disclosed in paragraphs [0031] and [0034].

With respect to claim 21, the mesh liner 12 is attached to the composite around its perimeter, and is unattached in a central region of the composite, as shown in figure 2.

With respect to claim 22, the mesh liner 12 is liquid permeable but not porous enough to allow bowel material.

With respect to claim 23, the mesh liner 12 has a basis weight in a range from 15-40 gsm.

With respect to claim 26, the mesh liner 26 is folded into pleats, as shown in figure 2.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 13-17, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. (US 2002/0028624 A1).

With respect to claim 6, Mitzutani discloses all aspects of the claimed invention with the exception of the mesh liner being nylon. Mitzutani discloses in paragraph [0073] that the mesh liner may comprise rayon or other synthetic fibers. Rayon and nylon are both well known in the art for use as liners, and it would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the liner of Mitzutani with nylon instead of rayon, since the two fabrics are functionally equivalent in this situation, and the invention would perform equally well with either rayon or nylon.

With respect to claims 13 and 24, Mitzutani discloses all aspects of the claimed invention with the exception of the hole size of the mesh liner. Mitzutani discloses in paragraph [0070] the desire for a nonwoven material having a high air gap ratio, and thus a high porosity. It would therefore be obvious to one of ordinary skill in the art at the time of invention to make the hole size of the mesh liner in a range of 147-5810 microns, since it has been held that where the general conditions of the claim are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art.

With respect to claims 14-17 and 25, Mitzutani discloses all aspects of the claimed invention with the exception of the tensile strength of the mesh liner. Mitzutani discloses in paragraph [0074] a breaking strength for the mesh liner, and thus shows a desire for an adequate strength for the mesh liner. It would therefore be obvious to one

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of ordinary skill in the art at the time of invention to make the tensile strength of the mesh liner in a range of at least 5 lbs of force per 4 inches of liner, since it has been held that where the general conditions of the claim are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

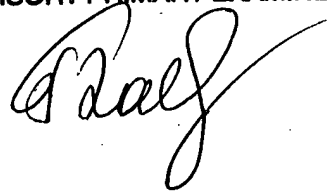
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CWA
cla
March 30, 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', is written over the printed name and title.